

VICTIMS AND WITNESSES HAVE RIGHTS

INTRODUCTION

Crime hurts! As a victim of crime, you may experience significant injury, loss, confusion and life-disruption. Shock, disbelief, fear, vulnerability, anger, and frustration may result. At the same time, you find it necessary to become involved with a variety of community agencies.

The community has a legal and moral responsibility to respond to criminal victimization in order to preserve order and protect the community. Victims and witnesses of crime are essential partners in this community effort. Without your participation and cooperation as a citizen, the criminal justice systems cannot serve the community. However, the complexity and limitations of these agency processes can become sources of additional frustration for you as a victim or a witness.

This booklet has been prepared to assist you in understanding your rights and to provide information about the roles of various public and private agencies. Your informed participation is vital to our state's system of criminal justice.

UTAH COUNCIL ON VICTIMS

The criminal justice system has typically been insensitive to the needs and concerns of crime victims, frequently adding to the suffering of those already damaged by criminal acts. In order to address these problems, the Utah Council on Victims was established and given the responsibility of coordinating statewide efforts on behalf of victims. The Council is a bi-partisan body with representation from across the State of Utah. Utah law also establishes a Victims' Rights Committee in each of the eight judicial districts in the state. The purpose of these committees is to address specific complaints and problems within their respective judicial districts. The Chairman of each of these District Rights Committees, along with other select victim advocates, serves on the Utah Council on Victims. The Utah Council provides training and assistance to victims' programs in prosecutors' offices, police departments and other agencies across the state. The Council also has become a voice to improve victim services and rights in the State of Utah. In recent years, significant legislation and court rule changes have been enacted to improve the status of victims. Examples of these changes are Crime Victim Reparations, Crime Victims' Bill of Rights, Victims' Constitutional Amendment and enabling legislation, Consideration of Dangerousness at Bail Hearings, and Rape Shield.

Through the various Victims' Rights Committees in the judicial districts, victims' concerns will be monitored throughout the state. Individuals may bring to the attention of the Judicial Victims' Rights Committees violations of the Bill of Rights. A form entitled "Victim/Witness Complaints" has been developed for this purpose. For additional information on this complaint procedure see the section "Complaint Procedures" of this brochure. The Utah Council reviews all complaints which have not been resolved by the local District Rights Committee.

Members of the Utah Council on Victims and the various District Victims' Rights Committees are committed to improving the status of crime victims in the state of Utah. Participation in the various projects of the Council is encouraged and individuals interested in becoming involved in the victims' movement should contact the Office of Crime Victim Reparations at 238-2360.

VICTIM AND WITNESS BILL OF RIGHTS

In recent years the Utah Legislature has passed a number of provisions in a continuing attempt to afford victims the rights they deserve. In 1994 numerous groups and citizens rallied together to support and pass a Victims' Rights Amendment to the state constitution. These efforts have culminated in working toward the end result we all are striving to reach, "balancing the scales of justice."

A summary of those rights are as follows:

1. Victims have the right "to be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process."
2. Victims have the right, upon request, to be informed of, be present at, and to be heard at important criminal justice hearings related to the victim, either in person or through a designated representative.
 - a. The rights apply to "important criminal justice proceedings" which are defined as: preliminary hearings; arraignments; disposition of charges; conditions of release/bail hearings; trials; sentencings and parole hearings.
 - b. These provisions apply to all felonies in adult courts. (In cases involving juvenile offenders, victims have the right to attend and speak at juvenile proceedings for offenses that are comparable to felonies in adult court.)
3. Victims have the right to reasonable employer intercession services to minimize loss of pay and benefits.
4. Victims have the right to be informed as to the level of protection available to protect them from intimidation and harm.
5. Victims have the right to a secure waiting area that does not require them to be in close proximity to defendants and offenders.
6. Victims have a right to privacy and should not be forced to disclose their address, telephone number, place of employment, or other locating information, without compelling reason.
7. Victims have the right to have a sentencing judge, for the purpose of imposing an appropriate sentence, receive and consider reliable information concerning the background, character and conduct of those convicted.
8. Victims have the right to reparations and restitution when appropriate.
9. Victims have a right to a speedy trial and disposition of charges.

Additional Rights for Children

1. The right to have interviews relating to a criminal prosecution kept to a minimum.

2. The right to be questioned in a manner that is appropriate to the child's age and understanding. The right not to be questioned in a manner that implies they are responsible for the inappropriate behavior of adults.
3. The right to protection from physical and emotional abuse during their involvement with the criminal justice process.
4. The right to be informed of available community resources and how to gain access to those resources.

AGENCY RESPONSIBILITIES

Agencies have certain responsibilities to see that victims and witnesses rights are complied with.

Law Enforcement Responsibilities

- represent link between the victim and available services
- protect individuals from intimidation and threats
- provide clear explanations regarding legal proceedings
- be informed and supportive of services for victims, including State Crime Victim Reparations program.
- return all property used as evidence
- establish policies and procedures to encourage a speedy disposition of criminal cases, void of unnecessary delays

Prosecutors' Responsibilities

- work with law enforcement in protecting individuals from threats and harassment
- make the victim aware of judicial process, upon request
- inform victim on felony cases as they proceed through the system, upon request
- inform victim of State Crime Victim Reparations program and provide needed assistance in preparation of application for reparations
 - work with employer to assure individual will not suffer job or wage loss due to court appearances
- provide individual with timely notice of court appearances as well as postponements
- inform parent/guardian of community resources available to children involved in crime
- work with other agencies for speedy disposition of court cases
- after filing criminal charges, the victim, upon their request, will receive notice of important hearings

- provide the right to introduce a photograph of the victim taken before the homicide

Courts' Responsibilities

- provide secure waiting areas away from defendant and defendant's family while waiting to testify
- order restitution for victim
- provide for the right to a speedy trial and disposition of charges
- provide for each presiding District Court Judge to appoint a person to establish and chair a District Victims' Rights Committee
- take reasonable measures in scheduling hearings to allow victims to be notified
- provide the right of a victim to be present and heard at all important hearings except at trial or preliminary hearing
- designate a representative to represent the victim's rights if the victim is deceased or incapacitated
- may allow minor to exercise victim's rights or designate a family member or appropriate person to exercise their rights
- provide a victim the right to have a sentencing judge for the purpose of imposing an appropriate sentence and consider reliable sentencing information such as background, character and conduct of a person convicted of an offense
- provide the victim a right of privacy to not be forced to disclose address, telephone number, place of employment and other identifying information
- consider victim's interest when entertaining a defense motion for delay
- provide written findings if a continuance is granted for the defendant
- provide that age appropriate language must be used at all preliminary hearings involving sexual abuse against a child, including examination and cross-examination of a victim or witness under the age of 13
- provide the right for victims to attend juvenile proceedings when the offenses are comparable to felonies in adult court
- provide victims the opportunity to be heard in juvenile court

State Crime Victim Reparations Office Responsibilities

- compensate victims of violent crime who suffer physical or psychological injury
- provide training to allied agencies and publicize the program across the state

- provide assistance through VOCA grants to public and non-profit organizations for direct services to victims of crime
- act as a broker of victim services and provide networking of those services

State Human Services Responsibilities

- investigate allegations of abuse or neglect and provide protection
- assist in obtaining needed resources including counseling, medical or financial assistance
- arrange for shelter or foster care for children as needed
- notify victims of the State CVR program
- provide protection against unnecessary interviewing of child victims

Corrections Responsibilities

- assist victims when threats are made
- inform and assist victims through correction system
- assist in determining restitution amounts, collecting and disbursing.
- inform victims of the State CVR program
- upon proper request, notify victims of offender's release from halfway house, work release, rehabilitation program, state hospital or escape
- provide secure waiting areas away from offender and offender's family while waiting to testify at parole hearing

Board of Pardons & Parole Responsibilities

- order a “no contact clause” or take punitive action against offender (if under the jurisdiction of the Board) if the victim is threatened
- inform victims of their role with the Board prior to a parole hearing
- assist victims with their case
- order restitution when applicable
- inform victims of the State CVR program and assist in the application process
- notify victims of hearings in a timely manner
- inform victims of offenders' status in prison and release date, if requested

Judicial District Victims' Rights Committees Responsibilities

- establish and chair a committee with a membership consisting of a county attorney, a sheriff, a corrections field services administrator, a victim advocate, a municipal attorney, a municipal chief of police, and other representatives as appropriate
- meet a minimum of twice each year
- address the concerns of victims and other interested parties regarding the rights
- review the progress and problems relating to the Victims Rights section of the Utah Code
- submit minutes of the committee meetings to CCJJ/CVR
- inform victims of the statute's provision which allows for an injunctive relief to be brought against any individual and the government entity that employs the individual for failure to provide the rights afforded victims under the Victims' Rights Statute

COMPLAINT PROCESS

Complaint Process

1. Complaints must be submitted in writing and delivered to the Office of Crime Victim Reparations. If the complaint first goes to the District Victims' Rights Committee, the Chair shall immediately forward a copy to the Office of Crime Victim Reparations.
2. The Office of Crime Victim Reparations will acknowledge receipt of complaint within five working days and forward the complaint to the District Victims' Rights Committee Chair. Acknowledgment will be in the form of a letter to the complainant indicating the date the complaint was referred to the District Victims' Rights Committee Chair.
3. The District Victims' Rights Committee will respond to the complainant within 30 days of receipt of the complaint. If a hearing before the Committee is deemed appropriate, it will be held within 60 days.
4. If the District Victims' Rights Committee fails to respond to the complaint within the prescribed time, a designated subcommittee from the Utah Council on Victims will review the complaint.
5. The District Victims' Rights Committee is responsible for providing the following information to the Office of Crime Victim Reparations:
 - a. copy of the complaint (if not first received or sent to Crime Victim Reparations)
 - b. date of complaint hearing
 - c. disposition of complaint hearing

Complaint Hearing

1. A quorum consisting of one half the District Victims' Rights Committee membership shall be present to hear the complaint.
2. An individual has the right to testify in writing, appear in person or be represented by another individual at the complaint hearing.
3. The individual or agency named in the complaint has the right to respond in writing, appear in person or be represented by another individual.
4. Both parties will be allowed to respond to the testimony. Time limits shall be set for the rebuttals before the hearing begins. Parties will be excused before committee discussion. Both parties will be informed in writing within 30 days of the hearing of any committee action.
5. If the person or agency fails to respond or if the issue cannot be resolved at the District Victims' Rights Committee hearing, the matter shall be referred to the Utah Council on Victims for further review.

Complaint Resolutions

1. The following are options available to the District Victims' Rights Committees:
 - a. Refer complaint to appropriate agency.
 - b. Request that the agency resolve the problem by adhering to the Victims' Rights Statute.
 - c. Use any method allowed by law to ensure that recommendations are implemented.
 - d. Decide to take no action due to lack of merit or authority.
2. Each victim will be sent a copy of the complaint procedures of the committee which will include the committee's decision.
3. Victims will be informed that they have the right to pursue an injunctive relief when a violation of their rights has occurred.
4. The District Victims' Rights Committee will inform the Utah Council on Victims of the disposition of the complaint.

VICTIM COMPENSATION

Victim Reparations

If you are the victim of a violent crime, you may be eligible for compensation. Individuals who qualify for the program are victims of violent crime who have suffered physical or psychological injury as well as dependents of deceased victims. To qualify, a police report must be filed within seven days after the occurrence and claims must be filed within one year after the crime occurred. (Some extenuating circumstances) Awards can be made up to \$25,000 for medical care, mental health counseling, loss of earnings, burial expenses, dental care, loss of support to dependents and some essential personal property items for the health and safety of the individual. No awards can be made for property losses. The amount of the award is based on collateral sources available to

the victim such as Medicare, Medicaid, insurance, worker's compensation. Funding of the program comes from criminal offenders through surcharges and fines.

Victim Assistance

Victim of Crime Act (VOCA) grants are federally funded awards available to private and public agencies that provide direct services to crime victims. Services available include crisis intervention, therapy, support groups, crisis hotline, shelter, criminal justice support, and emergency legal assistance. These services are housed within city and county prosecutors' offices, police departments, family support centers, children's justice centers, rape crisis centers, domestic violence shelters and mental health organizations

Civil Legal Remedies Available to Crime Victims

Civil litigation is an additional meaningful option for recovery from emotional and physical damages which have resulted from the crime. In pursuing civil litigation, you are responsible to hire your own attorney.

Restitution

Utah law provides that the judge shall order that the offender make restitution when appropriate. Restitution is ordered in most cases and can help cover the cost of out of pocket expense such as medical and property losses. While restitution is appropriate in most cases, there is no guarantee that you will receive payments in a timely manner -- or at all. Most offenders have few financial resources available to them. If the offender fails to make restitution payments, there are legal options available to pursue.

For further information or questions you may have, please call or write: State of Utah, Office of Crime Victim Reparations, 350 East 500 South, Suite 200, Salt Lake City, Utah 84111; call 238-2360 in Salt Lake County and toll free 1-800-621-7444 for all other areas of Utah.

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